No. 90-1577

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

Whether, in sentencing respondent as a juvenile delinquent pursuant to 18 U.S.C. 5037(c)(1), which provides that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," the district court was required to apply the Sentencing Guidelines to determine "the maximum term of imprisonment."

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No.

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v.

R.L.C., A JUVENILE MALE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-14a) is reported at 915 F.2d 320. The opinion of the district court (App., *infra*, 15a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1990. A petition for rehearing was denied on December 18, 1990. App., *infra*, 15a. On March 12. 1991, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including April 17, 1991. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 5037 provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. * * *
>
> * * * * *
>
> (c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—
>
> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or
>
> (2) in the case of a juvenile who is between eighteen and twenty-one years old—
>
> (A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or
>
> (B) in any other case beyond the lesser of—

> (i) three years; or
>
> (ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.
>
> Section 3624 is applicable to an order placing a juvenile under detention.

STATEMENT

1. On November 5, 1989, La Tesha Mountain died on the Red Lake Indian Reservation as the result of head and neck injuries suffered when she was propelled from the back seat to the front of a car that her mother, Deborah Garrigan, was driving. Tr. 6, 44-45, 49, 217. The car was demolished when it was hit from the rear by a stolen Chevrolet Camaro driven by respondent. Tr. 44, 56, 68-69, 151-153, 166-168. Respondent and James White, Jr., another juvenile who was a passenger in the car when it was stolen and when the accident occurred, were drunk. They had been drinking at an adult party on the reservation and thereafter stole the car that was involved in the accident. Tr. 119, 163-169, 197-198, 217, 240-241, 249, 279-280; App., *infra*, 2a, 15a-16a.

2. Following a bench trial, the district court found that respondent stole the car, that he drove the car recklessly while he was intoxicated, that he caused La Tesha's death, and that his conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. Tr. 318-319; App., *infra*, 15a-16a.

At sentencing, respondent sought leniency but did not ask the court to apply the Sentencing Guidelines to determine his sentence. Nor did he urge the court

to limit his term of commitment to the base offense level defined by the Sentencing Guidelines. 1/24/90 Tr. 5-7. The government urged the court to impose the maximum statutory penalty of three years' confinement. *Id* at 7-8. See 18 U.S.C. 1112(b). The court carefully weighed the sentencing options and the circumstances of the crime, as well as the juvenile facilities available for detention. 1/24/90 Tr. 9-10. After doing so, the court committed respondent for a term of three years and recommended that he be sent to the Missouri River Adolescent Center in Chamberlain, South Dakota. *Id.* at 8-11.

3. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sentence and remanded the case for resentencing. App., *infra*, 1a-14a. The court concluded that the 36-month sentence that respondent received exceeded the maximum period of confinement that can be imposed on a juvenile delinquent under 18 U.S.C. 5037(c)(1), which provides in part that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." App., *infra*, 3a-14a.

The court acknowledged that the Sentencing Guidelines do not apply to individuals sentenced as juvenile delinquents under 18 U.S.C. 5037, App., *infra*, 6a, but nevertheless concluded that "[u]sing the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences." *Ibid.* The court also determined that the legislative history of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, 98 Stat. 1987 (codified at 18 U.S.C. 3551-3742 and 28 U.S.C. 991-998), supported that conclusion because it showed that "Congress did not intend the real time served by juvenile offenders to exceed the real time that would be served by adults convicted of similar crimes." App., *infra*, 7a-8a. Finally, the court invoked the rule of lenity, stating that the rule "favors the statutory construction that yields the shorter sentence." *Id.* at 12a. As the court summarized: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." *Id.* at 12a-13a.

4. The government filed a petition for rehearing and suggestion for rehearing en banc. The panel denied the rehearing petition, and the full court declined the suggestion for en banc rehearing over the dissent of four judges. App., *infra*, 17a.[1]

REASONS FOR GRANTING THE PETITION

The court of appeals has erroneously decided an important question of law in a manner that conflicts with a decision of another federal court of appeals. By limiting the "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" under 18 U.S.C. 5037(c)(1)(B) to the presumptive term of imprisonment that a similarly situated adult would face under the Sentencing Guidelines, the court of appeals has seriously misread the commitment provisions for juvenile delinquents. In effect, the Eighth

[1] Pursuant to the court of appeals' mandate, respondent was resentenced on January 25, 1991, to a period of 18 months' confinement.

Circuit has ruled that the Sentencing Guidelines must be applied by the district courts in making commitment decisions in juvenile delinquency proceedings even though neither Congress nor the Sentencing Commission has imposed any such requirement.

1. The Eighth Circuit's decision in this case directly conflicts with the Ninth Circuit's decision in *United States* v. *Marco L.*, 868 F.2d 1121, cert. denied, 493 U.S. 956 (1989). In *Marco L.*, the Ninth Circuit held that the "maximum term of imprisonment" authorized by 18 U.S.C. 5037(c)(1) is the maximum term of imprisonment authorized by the statute describing the offense, not the top of the presumptive sentencing range defined by the Sentencing Guidelines. 868 F.2d at 1122-1124. The court below expressly acknowledged that its holding conflicts with the Ninth Circuit's decision in *Marco L.* App., *infra*, 13a n.3.

2. The question presented will recur with sufficient regularity that it is important for this Court to resolve the conflict. In Fiscal Year 1990, the federal government brought juvenile delinquency proceedings against 168 defendants, and the figures for Fiscal Years 1986-1989 are similar.[2] Moreover, many such cases (like this one) can be prosecuted only in federal courts, because the crime occurs in an area of exclusive federal jurisdiction, such as an Indian reservation.

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[2] In 1986, the federal government brought juvenile delinquency proceedings against 129 defendants. In 1987, there were 81 juvenile delinquency defendants; in 1988, there were 132, and in 1989, there were 172. Administrative Office of the U.S. Courts, *Federal Judicial Workload Statistics* Table D-2 (Sept. 30, 1990).

3. The decision below is plainly incorrect. Analysis of 18 U.S.C. 5037 and the Sentencing Reform Act of 1984 shows that the "maximum term of imprisonment" authorized by Section 5037(c)(1) is the maximum term of imprisonment authorized by the law describing the offense of conviction, not the top of the presumptive sentencing range defined by the Sentencing Guidelines.

a. The Sentencing Guidelines do not "authorize" any punishment to be imposed for an offense. Congress directed the Sentencing Commission to adopt a comprehensive system of guidelines to channel the district courts' sentencing discretion, but did not give the Sentencing Commission "authority" to establish punishments or to modify an offender's "maximum term of imprisonment" in any way; Congress reserved that authority for itself. The Sentencing Guidelines define ranges of presumptive sentences for categories of offenses and offenders; those ranges are within the limits provided by the existing laws defining the punishment for particular offenses. 28 U.S.C. 991, 994(a) and (b); *Mistretta* v. *United States*, 488 U.S. 361, 367-369, 374-375 (1989) ("Congress instructed the Commission that these sentencing ranges must be consistent with pertinent provisions of Title 18 of the United States Code and could not include sentences in excess of the statutory maxima."). Congress also left in the district courts' hands the discretion to depart upward from the Guidelines range if there is an aggravating factor of a kind or to a degree that was not adequately considered by the Sentencing Commission and that warrants a more severe sentence than can be found within the presumptive sentencing range. 18 U.S.C. 3553(b). See also United States Sentencing Comm'n, *Guide-*

lines Manual § 5K2.0 (1990). The Sentencing Guidelines therefore do not "authorize" a "maximum term of imprisonment," but simply channel the courts' discretion to impose a particular term of imprisonment within the range that Congress has authorized.

That conclusion is fully consistent with general principles of federal criminal law. This Court's decisions make clear that only Congress has power to "authorize" a term of imprisonment as the punishment for a crime. As this Court stated in *Ex parte United States*, 242 U.S. 27, 42 (1916), "the authority to define and fix the punishment for crime is legislative." See *United States* v. *Evans*, 333 U.S. 484, 486 (1948); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812). Because the "authority" to imprison an offender stems from the law defining the offense and authorizing a term of imprisonment, the most natural reading of the "maximum punishment" clause in 18 U.S.C. 5037(c)(1) refers to the maximum term of imprisonment authorized in the law defining the offense.[3]

Another provision of the Sentencing Reform Act of 1984 makes the same point. One new feature adopted by the Act was a classification system that would be used in future legislation to rank federal offenses according to their relative seriousness. Felonies would be categorized from Class A to E, misdemeanors from Class A to C, with remaining crimes listed as infractions. 18 U.S.C. 3559(a)(1)-(9). Congress believed

[3] Examination of other portions of Title 18 demonstrates that the phrase "maximum term of imprisonment" is used as a term of art. Congress has invariably used that phrase to mean the maximum penalty authorized by statute. See, *e.g.*, 18 U.S.C. 3, 373, 3142(e), 3156(a)(3).

that this grading system would enable it to define the maximum term of imprisonment, the maximum fine, the availability and maximum term of probation, and the maximum term of supervised release simply by specifying the grade of a particular offense. S. Rep. No. 225, 98th Cong., 1st Sess. 51, 86-88 (1983).[4] To avoid any misunderstanding about the effect of this classification system, particularly for existing laws, Congress made clear that "the maximum term of imprisonment is the term authorized by the law describing the offense," not by the new grading scheme. 18 U.S.C. 3559(b). Congress therefore was quite explicit in providing that the maximum term of imprisonment authorized for an adult offender is the maximum sentence set by the statutory penalty provision.

The definition given to the phrase "maximum term of imprisonment" in Section 3559(b) is significant because Section 3559(b) was enacted and 18 U.S.C. 5037(c)(1) was amended in the Sentencing Reform Act of 1984. See 18 U.S.C. 3559 and 5037 (Supp. II 1984). Since Congress is presumed to give terms the same meaning throughout a statute, see, *e.g.*, *Sullivan* v. *Stroop*, 110 S. Ct. 2499, 2504 (1990), the phrase "maximum term of imprisonment" should have the same meaning in Section 5037(c)(1) that it has in Section 3559(b).[5] Thus, as the Ninth Circuit

[4] See 18 U.S.C. 3561(a) (probation), 3571(b) (fines), 3581(b) (imprisonment), 3583(b) (supervised release).

[5] The 1984 amendments also did not adopt a novel rule of law. The version of Section 5037 that was in effect prior to the 1984 amendment made clear that a juvenile offender could be sentenced to the same period of custody as an adult convicted of the same crime. See 18 U.S.C. 5037(b) (1982) (authorizing a district court to commit a juvenile

concluded in *Marco L.*, 868 F.2d at 1124, Section 3559 (b) shows that the "maximum term of imprisonment" that can be imposed under Section 5037 on a juvenile delinquent refers to the maximum period of confinement set forth in the statute describing the offense. See also S. Rep. No. 225, *supra*, at 51, 114.[6]

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for a period "not [to] extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner"); S. Rep. No. 1011, 93d Cong., 2d Sess. 57 (1974) (at a juvenile disposition hearing, the court may "commit the juvenile to the custody of the Attorney General for a period not to extend beyond the juvenile's twenty-first birthday, or the maximum term for which a sentence could have been imposed on an adult convicted of the same offense, whichever comes first").

[6] In 1986, Congress amended Section 5037 by deleting the phrase "by section 3581(b)" immediately following the phrase "maximum term of imprisonment that would be authorized." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 21(a)(2), 100 Stat. 3596. Referring to the 1986 Amendment, the Eighth Circuit noted "that Congress reconsidered and rejected establishing * * * statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive." App., *infra*, 7a n.1. The court of appeals relied on that amendment to bolster its conclusion that juveniles may not be given longer criminal sentences than adults. In doing so, the court misread the 1986 amendment.

The purpose of the 1986 amendment to 18 U.S.C. 5037 was to ensure that juveniles would not receive a more severe punishment than adults, not to provide a lower ceiling for juvenile offenders. See S. Rep. No. 278, 99th Cong., 2d Sess. 3 (1986) ("Section 17 [of the bill that became the 1986 Act] makes clear that juvenile sentences are to be of equal length as those for adult offenders committing the same crime, * * *."); 131 Cong. Rec. 14,177 (1985) (section-by-section analysis of S. 1236) ("Because of the effect of 18 U.S.C. § 3559(b)(2) [Supp. II 1984], deleting the reference to section 3581(b) will tie the maximum sentence for juveniles to the maximum sentence for adults, rather than making juvenile sentences more severe than adult sentences."). A footnote in the House Committee Report says that this amendment in the 1986 Act "delete[s] references to 18 U.S.C. 3581(b) so that juvenile offenders will not be subjected to the same maximum penalties assessed for adult offenders. A parallel amendment is made by section 3(b) of the bill. *See* discussion at 3, *supra*." H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 n.3 (1986). Although that footnote is inartfully phrased, when read in context it indicates that the purpose of the amendment was to ensure that juvenile offenders would have their maximum terms of confinement set by Sections 5037 and 3559(b), instead of 3581(b), which relates only to adult offenders.

b. The Eighth Circuit stated that the Sentencing Guidelines do not apply to juvenile commitment hearings under 18 U.S.C. 5037, App., *infra*, 6a, but its decision effectively requires district courts to apply the Guidelines to commitment decisions at juvenile hearings. That requirement is unjustified because Congress did not incorporate the Sentencing Guidelines into 18 U.S.C. 5037.

Section 5037(a) requires the court, at a juvenile disposition hearing, to "*consider*[] any pertinent *policy statements* promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994" (emphasis added). The necessary implication of that provision is that courts should consider the Commision's policy statements in selecting juvenile dispositions, but they need not apply the Guidelines themselves.[7]

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[7] The Sentencing Reform Act of 1984 clearly distinguishes between the Sentencing Commission's policy statements and its guidelines. See 28 U.S.C. 994-995. See also S. Rep. No. 225, *supra*, at 167 ("It should be noted that a sentence

Moreover, 28 U.S.C. 995(a)(19) directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents." That provision would be meaningless if the courts already had to apply the Guidelines in juvenile commitment proceedings. The legislative history of the Sentencing Reform Act of 1984 makes the same point, stating that "[t]he Parole Commission now uses its Youth Corrections Act guidelines for juveniles; it is expected that the Sentencing Commission will make a similar recommendation for Federal judges." S. Rep. No. 225, *supra*, at 183. To date, the Sentencing Commission has not adopted any policy statements for juvenile commitment determinations, and it has only recently begun to consider whether Sentencing Guidelines for juveniles are feasible.

In sum, these provisions show that the Sentencing Guidelines do not apply to juvenile commitment hearings, as the Ninth Circuit noted in *Marco L.*, 868 F.2d at 1124. Unless and until the Sentencing Commission adopts policy statements restricting the district courts' sentencing discretion at such hearings, the district courts can still exercise the same sentencing discretion that they enjoyed at juvenile and adult sentencing proceedings before the Sentencing Guidelines went into effect. In the exercise of that discretion, the district courts can sentence juvenile delinquents to terms of detention equal to the statutory maximum terms for the applicable penal provisions. The district court therefore did not violate 18 U.S.C.

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that is inconsistent with the sentencing guidelines is subject to appellate review [see 18 U.S.C. 3742], while one that is consistent with [the] guidelines but inconsistent with the policy statements is not.").

5037(c)(1) in committing respondent to three years' custody for involuntary manslaughter.

c. The Eighth Circuit correctly noted that 18 U.S.C. 5037(c) was amended as part of the Comprehensive Crime Control Act of 1984. The court then reasoned that, because a principal purpose of the Act was to eliminate unwarranted sentencing disparities in federal cases, the "maximum punishment" clause should be read to limit the maximum sentence that can be imposed on a juvenile to the maximum term of confinement in the Sentencing Guidelines. Otherwise, the court of appeals reasoned, juveniles would be subject to more severe punishments than adult offenders, which would undercut the goals of the Act. App., *infra*, 7a-11a.[8]

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[8] The Eighth Circuit invoked the rule of lenity in support of its interpretation of 18 U.S.C. 5037(c)(1), App., *infra*, 11a-12a, but that canon of construction has no application to this case. The rule of lenity is not applicable unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974), such that even "[a]fter [a court has] 'seize[d] every thing from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). This Court has "always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to" the standard tools of statutory interpretation. *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990). The text of Section 5037 makes clear that the maximum punishment" clause refers to the statutory maximum punishment, and a straightforward reading of Section 5037 does not produce a result "so 'absurd or glaringly unjust,'" *United States* v. *Rodgers*, 466 U.S. 475, 484 (1984) (quoting *Sorrells* v. *United States*, 287 U.S. 435, 450 (1932)), as to raise a "reasonable doubt," *Moskal* v. *United States*, 111 S. Ct. at 465, about Congress's intent. There is therefore no occasion to resort to the rule of lenity.

The premise of the court of appeals' analysis is mistaken. Reading the "maximum punishment" clause as referring to the statutory maximum punishment would not necessarily result in harsher penalties for juveniles. Juveniles and adults who commit involuntary manslaughter can both be sentenced to three years' confinement. The difference between the two is that the Sentencing Guidelines apply to adult offenders, so the district court may need to depart upward from the Guidelines range in order to confine an adult for three years. By the same token, however, a district court would need to depart downward in order to sentence an adult convicted of manslaughter to a term of imprisonment below the Guidelines range, while a court could impose the same sentence on a juvenile without the need for a departure. The Sentencing Guidelines limit the discretion with respect to adult offenders that the district courts previously enjoyed, but do so in *both* directions —upward and downward—without affecting the maximum punishment that can be imposed under the statute of conviction. A juvenile committed under Section 5037 thus is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines.[9]

In any event, it would not be unconstitutional for a juvenile to be exposed to or committed for a longer period of confinement than an adult for the same offense. Juvenile offenders are detained in different

[9] In fact, a juvenile committed under Section 5037 is in a *better* position than an adult who is sentenced under the Sentencing Guidelines, because a juvenile committed under Section 5037 is not subject to a postcustody term of supervised release after completing his commitment period. Compare 18 U.S.C. 5037(b) and (c) with 18 U.S.C. 3583 and Sentencing Guidelines § 5D1.1.

settings, for different reasons, and under a different criminal justice system than adult offenders. See *Marco L.*, 868 F.2d at 1122-1124. Accordingly, there is no inherent inequity in providing different periods of detention for juveniles than for adult offenders. For example, because of the rehabilitative purposes and programs of the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982) (repealed by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, § 218(a)(8), 98 Stat. 2027), the courts consistently held that it did not violate equal protection principles or the Due Process Clause for an offender sentenced under that Act to be subjected to a period of custody and subsequent supervision that exceeded the maximum sentence imposable on an adult for the same offense. See *United States* v. *Lowery*, 726 F.2d 474, 477-478 (9th Cir. 1983), cert. denied, 469 U.S. 837 (1984); *United States* v. *Donelson*, 695 F.2d 583, 588-591 (D.C. Cir. 1982) (Scalia, J.); *United States* v. *Van Lufkins*, 676 F.2d 1189, 1193-1194 (8th Cir. 1982); *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.); *Cunningham* v. *United States*, 256 F.2d 467, 472-473 (5th Cir. 1958). In sum, there is no ground in either the language or purpose of Section 5037 to limit the sentence that can be imposed on juvenile offenders to the presumptive sentencing range set forth in the Sentencing Guidelines.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APRIL 1991

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048

UNITED STATES, APPELLEE

v.

R. L. C., JUVENILE MALE, APPELLANT

Appeal from the United States District Court
for the District of Minnesota

Submitted: August 14, 1990
Filed: September 12, 1990

Before LAY, Chief Judge; HEANEY and BRIGHT, Senior Circuit Judges.

HEANEY, Senior Circuit Judge.

R.L.C., a juvenile, appeals from the district court's finding of juvenile delinquency for involuntary man-

slaughter pursuant to 18 U.S.C. §§ 5031, 1112(b), and 1153. He also appeals from a sentence of three years detention in a federal juvenile correctional facility. We affirm the finding of juvenile delinquency but vacate R.L.C.'s sentence and remand to the district court for resentencing.

BACKGROUND

R.L.C., 16, was charged in a one-count information with involuntary manslaughter on the Red Lake Indian Reservation for causing the death of LaTesha Lynn Mountain while driving a car in a reckless manner while intoxicated.

Following an evening of heavy drinking, R.L.C. and another juvenile, James White, Jr., stole a car on the Red Lake Reservation. Shortly after the car was stolen, a witness saw it rear-end a car driven by Deborah Garrigan while travelling east on Highway 1 in Red Lake. Mountain, Garrigan's daughter, died from head injuries she received when she was thrown from the back seat to the front seat of Garrigan's car during the accident. The stolen car was later found in flames in the woods southwest of the accident scene.

R.L.C. and White both admitted drinking, stealing the car, and driving it at some point during the evening. Both denied having driven the car, however, at the time the accident occurred. Three witnesses, including White, placed R.L.C. behind the wheel at or immediately before the time of the accident. R.L.C. stated that he was sleeping in the passenger seat when the accident occurred, and did not awaken until the car crashed and ignited in the woods.

Following a trial to the court, the district court found that R.L.C. had been driving the car while in-

toxicated and in a reckless manner at the time of the accident which caused Mountain's death and that this conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a). The district court adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031.

At sentencing, the prosecution requested that R.L.C. receive the statutory maximum penalty for involuntary manslaughter under 18 U.S.C. § 1112 (b), three years. The district court acceded to the request and sentenced R.L.C. to three years detention at the Missouri River Adolescent Center in Chamberlain, South Dakota. R.L.C. appeals.

DISCUSSION

R.L.C. raises two issues on appeal. He claims that the evidence at trial was insufficient to prove beyond a reasonable doubt that he drove the car at the time of the accident. After carefully reviewing the record, we believe the trial testimony adequately supports the district court's finding that R.L.C. was driving the car when the accident occurred. Accordingly, R.L.C.'s sufficiency of the evidence claim is without merit.

R.L.C. also claims that the district court erred in sentencing him to the three-year maximum statutory penalty for involuntary manslaughter when an adult sentenced for the same offense under the sentencing guidelines would have received a maximum sentence of only twenty-one months.

As a juvenile delinquent, R.L.C. was sentenced under 18 U.S.C. § 5037. Section 5037(c) states:

> The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> > (A) the date when the juvenile becomes twenty-one years old; or
> >
> > (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult[.]

18 U.S.C. § 5037(c)(1) (1988).

R.L.C. argues that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" means the maximum sentence an adult could receive under the sentencing guideline for the same offense. Guideline section 2A1.4(a)(2) provides a base offense level of 14 for involuntary manslaughter caused by reckless conduct. At a criminal history category of I, a base offense level of 14 yields a sentencing range of 15-21 months. R.L.C. therefore argues that his sentence of three years violates 18 U.S.C. § 5037(c)(1)(B).

The government argues that "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" refers to the statutory maximum sentence for the particular offense committed. The maximum sentence for involuntary manslaughter under 18 U.S.C. § 1112 is three years. 18 U.S.C. § 1112(b) (1988). The government argues that R.L.C.'s three-year sentence is the same as the maximum term of imprisonment an adult could have received if convicted of the same offense, and that the sentence therefore is permitted under 18 U.S.C. § 5037(c)(1)(B).

Section 5037 provides no definition of "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." In light of this failure, we must determine the intent of Congress in enacting section 5037(c)(1)(B) to resolve its ambiguity. *See United States v. Jones*, 811 F.2d 444, 447 (8th Cir. 1987).

In construing a statute to ascertain its drafters' intent, we look first to the language of the statute itself, then to its legislative history. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984). As further aids in the determination of legislative intent, we may also properly consider a statute's subject matter, the object to be accomplished, the purpose to be served, the underlying policies, and the consequences of various interpretations. *Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1332 (8th Cir. 1985). An examination of all these factors persuades us that Congress did not intend juvenile delinquents ordinarily to be subject to penalties harsher than those received by adults convicted of the same offense.

Section 5037(c)(1)'s language expresses a preference for juvenile sentences which are the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. § 5037(c) (1988). The phrase "if *the juvenile* had been tried and convicted as an adult" suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult. Had R.L.C. been tried for and

convicted of involuntary manslaughter as an adult, he would have been sentenced under the sentencing guidelines, which provide a maximum sentence of 21 months for an individual with R.L.C.'s criminal history. The sentencing guidelines establish the permissible maximum and minimum sentence in all cases except those in which the sentencing court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence [above or below the guideline range]." 18 U.S.C. § 3553(b) (1988).

The sentencing guidelines themselves do not apply to individuals sentenced as juveniles. *See* United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). Section 5037 provides, however, that after a finding of juvenile delinquency, the court should consider any pertinent policy statements promulgated by the Sentencing Commission in determining the disposition appropriate to the offense. 18 U.S.C. § 5037(a) (1988). Using the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences. Using the upper limit of the applicable guideline sentencing range as the maximum sentence a juvenile could receive thus would further section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults.

Section 5037's legislative history also suggests that Congress intended the "maximum term of imprisonment" in subsection (C)(1)(B) to be the maximum

term the juvenile in question actually could have received if sentenced as an adult under the guidelines, rather than the statutory maximum sentence for the offense committed.

Section 5037(c)(1)(B) was amended as part of the Comprehensive Crime Control Act of 1984 (CCCA), the same legislation that authorized the establishment of the sentencing guidelines. *See* Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984).[1] This legislation made sweeping reforms in the sentencing of both adult and juvenile federal offenders. The CCCA's sentencing reform policies and goals, when considered in conjunction with other changes the CCCA made in the disposition of juvenile offenders, persuade us that Congress did not intend the real time served by ju-

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[1] The CCCA's legislative history states that: "[p]roposed 18 U.S.C. 5037(c) provides the maximum periods for official detention of a juvenile found to be a juvenile delinquent." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. The 1984 amendment to section 5037(c)(1)(B) differed slightly from the current version of the statute. A 1986 amendment, which took effect on November 1, 1987, deleted the words "by section 3581(b)" following the phrase "maximum term of imprisonment that would be authorized." *See* Pub. L. No. 99-646, § 21(a)(2) (1986) (cited in 18 U.S.C.A. § 5037 historical and statutory notes (West Supp. 1990)). Section 3581(b), also enacted as part of the CCCA, sets forth the maximum authorized terms of imprisonment for nine classes of federal felonies and misdemeanors. 18 U.S.C. § 3581(b) (1988). The import of the 1986 amendment is that Congress reconsidered and rejected establishing these statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The language of the 1984 amendment also suggests that if Congress wished to subject juveniles to the maximum sentences authorized by particular statutes, it knew how to say so.

venile offenders to exceed the real time that would be served by adults convicted of similar crimes.

The CCCA sought to establish a comprehensive and consistent system of sentencing that would promote fairness by eliminating unwarranted sentence disparity. S. Rep. No. 225, 98th Cong., 2d Sess. 50-52, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3133-35; *see also* U.S.S.G. ch. 1, pt. A, § 3 The Basic Approach (policy statement) (Congress' goals in sentencing reform were to achieve honesty, uniformity, and proportionality). Additionally, the legislation sought to promote certainty in sentencing by abolishing the parole system in federal law. *See* Pub. L. No. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984); S. Rep. No. 225, 98th Cong., 2d Sess. 56-58, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3239-41.

The CCCA's legislative history notes that the amended section 5037(c) "parallels the 1974 Act provision set forth in current law for juveniles under 18 at the time of the proceeding." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. Juveniles sentenced under the forerunner of current section 5037(c)(1)(B) were immediately eligible for parole. 18 U.S.C. § 5041 (1982) (repealed effective Nov. 1, 1987). The CCCA eliminated the possibility of parole for juveniles, meaning that each sentence imposed under section 5037(c)(1)(B) for offenses committed after November 1, 1987 represents the period of time the sentenced juvenile actually will be incarcerated. *See* S. Rep. No. 225, 98th Cong., 2d Sess. 156, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3339 ("It is expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney

General pursuant to 18 U.S.C. 5037(b) will represent the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.").

Under the law in existence prior to the CCCA, both juveniles and adults were subject to the statutory maximum sentence provided in the statute defining the offense. Both juveniles and adults were also eligible for parole; juveniles immediately on being sentenced, and adults after having served one-third of their sentences. *See* 18 U.S.C. §§ 5041, 4205 (1982) (repealed effective Nov. 1, 1987). After November 1, 1987, the effective date of the CCCA's sentencing reforms, adults were subject to the maximum sentences provided in the sentencing guidelines and were no longer eligible for parole. Juveniles were also no longer eligible for parole. The drafters of amended section 5037(c)(1)(B) intended its operation to parallel prior law. Accordingly, after November 1, 1987, juveniles sentenced under the amended statute should be subject to maximum, real time sentences no greater than those which adult offenders could receive under the sentencing guidelines.

Allowing a juvenile sentenced under section 5037(c)(1)(B) to remain subject to the pre-guideline statutory maximum penalty provided for the offense committed would produce juvenile sentences inconsistent with those received by adult offenders and relatively harsher than those to which juveniles were subject before November 1, 1987. It seems unlikely that Congress would seek to reduce sentence disparity and to increase certainty by creating a system under which juvenile offenders would automatically become subject to the real time equivalent of pre-guidelines statutory maximum sentences while similarly situated adults would ordinarily be subject only

to the maximum guideline sentence for the same offense.

Once the sentencing guidelines took effect, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581(b), *see supra* note 1, to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3297. Similarly, the guidelines were to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." *Id.* The CCCA's legislative history notes that these statutory maximum penalties were "no more intended to indicate the actual sentence a judge is expected to impose in each case than are the analogous provisions of current Federal statutes that also customarily set forth only the maximum limit on the judge's discretion." *Id.*

The Senate Judiciary Committee was also critical of existing statutory maximum penalties, suggesting that they could contribute to disparity and unfairness in sentencing. *See id.* at 39, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3222 ("These maximums are usually prescribed with little regard for the relative seriousness of the offense as compared to similar offenses."); *id.* at 87, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3270 ("Current maximum penalties are set at very uneven levels, and some are so inconsistent with the relative seriousness of the offense that the Sentencing Commission will probably find it necessary to recommend some amendments before sentencing guidelines are in place.").

These experts indicate that Congress intended statutory maximum penalties after the effective date of the sentencing guidelines to serve only as an upper limit on judicial discretion and to be applied to adults only in relatively rare and egregious circumstances. The guidelines' structure reflects this intent. For example, an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions.

Given the CCCA's goals of promoting consistency, uniformity, and fairness in sentencing and the relative disfavor in which its drafters held existing statutory maximum penalties, the interpretation of section 5037(c)(1)(B) which the government urges seems clearly wrong. If we were to adopt this construction, *any* juvenile adjudicated a delinquent for committing involuntary manslaughter could be sentenced to three years imprisonment with no possibility of parole. An adult convicted of the same offense, however, could receive the same sentence *only* if he had an extensive criminal record or if his commission of the offense included aggravating factors sufficient to increase his base offense level by five levels under the sentencing guidelines. *See* U.S.S.G. ch.5, pt. A—Sentencing Table. Such disparate results seem particularly unreasonable in light of the guidelines' admonition that age is not ordinarily a factor relevant to decisions among sentencing options. *See id.* § 5H1.1 (policy statement).

Rules of statutory construction also counsel against adopting an interpretation of section 5037(c)(1)(B) that would subject juveniles to the maximum statutory penalty for the offense committed. Criminal

statutes must be strictly construed. *See Dowling v. United States*, 473 U.S. 207, 213 (1985).[2] The rule of lenity states that a court cannot interpret a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). This principle of construction applies to sentencing provisions as well as to substantive criminal statutes. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *Rowe v. Lockhart*, 736 F.2d 457, 461 (8th Cir. 1984). The rule of lenity favors the statutory construction that yields the shorter sentence.

Section 5037(c)(1)(B)'s language and legislative history, the policies underlying federal sentencing reform, the consequences of the possible interpretations, and the rule of lenity require us to adopt the construction of the statute that subjects juveniles sentenced under it to the lesser penalty; in this case, the construction urged by R.L.C. We hold that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and con-

[2] Although an adjudication of juvenile delinquency under 18 U.S.C. § 5031 is a determination of status rather than a criminal conviction, *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980), the Federal Juvenile Delinquency Act entitles a juvenile to all rights that would be accorded an adult in a criminal prosecution except that right to a grand jury indictment. S. Rep. No. 93-1011, 93d Cong., 2d Sess. 38, *reprinted in* 1974 U.S. Code Cong. & Admin. News 5321. Because statutes imposing penalties on juvenile delinquents involve deprivations of liberty similar to those attendant on criminal conviction, they should be construed no less strictly than statutes imposing criminal sanctions on adults.

victed as an adult" prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines.[3] This holding requires a particularized, subjective determination in each case of the upper limit of the appropriate guideline range. In cases involving aggravating circumstances not contemplated by the guidelines, a court sentencing a juvenile delinquent could make a finding that the prescribed range did

[3] Our holding conflicts with that of the Ninth Circuit in *United States v. Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), *cert. denied*, 110 S. Ct. 369 (1989). We find that decision's reasoning unpersuasive for the reasons discussed above, and believe that its holding will lead to inequitable results inconsistent with the goals of federal sentencing reform.

The Ninth Circuit found persuasive language in 18 U.S.C. § 3559, which deals with the classification of federal offenses under the sentencing guidelines. Subsection (a) provides that offenses which do not contain a letter classification can be classified based upon the length of imprisonment authorized by the statute defining the offense. The *Marco* court points to section 3559(b), which is entitled "Effect of Classification," and states that "[a]n offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the statute describing the offense." The *Marco* court reasoned that this language shows that "Congress has defined the 'maximum term of imprisonment' to be that term prescribed by the statute defining the offense." *Id.* at 1124. The sentence in section 3559(b), however, refers *only* to language in section 3559(a), and seeks to establish what no one contests: that no matter what letter classification an offense is given, the maximum term of imprisonment a judge can impose is the term listed in the statute defining the offense. Section 3559(b) was not meant to function as an overaching definition of "maximum term of imprisonment" for the entire federal criminal code.

not adequately reflect the severity of the offense, and could deviate from that range accordingly.

CONCLUSION

We vacate the sentence imposed by the district court and remand this case for resentencing consistent with this opinion.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Crim. 4-89-175

UNITED STATES OF AMERICA, PLAINTIFF

v.

R. L. C., a JUVENILE, DEFENDANT

MEMORANDUM AND ORDER

Jerome G. Arnold, United States Attorney, and Jeanne J. Graham, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401, for plaintiff.

Katherian D. Roe, 174 U.S. Courthouse, Minneapolis, MN 55401, for defendant.

This matter is before the Court on a certification filed by the government pursuant to 18 U.S.C. § 5032 charging defendant, a juvenile within the meaning of 18 U.S.C. § 5031, and an Indian, with involuntary manslaughter pursuant to 18 U.S.C. §§ 1112 and 1153, such violation constituting "juvenile delinquency" pursuant to 18 U.S.C. § 5031.

Based on all the evidence presented at trial, and on the factual stipulations of counsel, the Court finds that the government has proven beyond a reasonable doubt that:

1. defendant was the driver of the vehicle which in the early morning hours of November 5, 1989 col-

lided with a vehicle in which LeTesha Lynn Mountain was a passenger;

2. LeTesha Lynn Mountain died as a result of injuries sustained as a result of that collision;

3. defendant was driving the motor vehicle involved in the collision without the authorization of the vehicle's owner;

4. at the time of the collision defendant was intoxicated;

5. at the time of the collision defendant was operating the motor vehicle in a reckless and unsafe manner in excess of the applicable speed limit;

6. such conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a);

7. at the time of the incident, defendant was an Indian, residing on and within the Red Lake Indian Reservation within Indian country in the State and District of Minnesota;

8. at the time of the incident defendant was a juvenile within the meaning of 18 U.S.C. § 5031.

Pursuant to the foregoing findings, IT IS HEREBY ADJUDGED that defendant is delinquent within the meaning of 18 U.S.C. § 5031. Defendant shall remain in the custody of his uncle, Donald Cook, until the Court holds a dispositional hearing pursuant to 18 U.S.C. § 5037.

/s/ Harry H. MacLaughlin
JUDGE HARRY H. MACLAUGHLIN
United States District Court

DATED: December 26, 1989

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048MN

UNITED STATES, APPELLEE

vs.

R. L. C., JUVENILE MALE, APPELLANT

ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Appellee's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc. Judges Bowman, Wollman, Magill and Beam would have granted the petition.

Petition for rehearing by the panel is also denied.

December 18, 1990

ORDER ENTERED AT THE DIRECTION OF THE COURT

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit

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